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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6225
DATE COMPLAINT FILED: 10/27/09
DATE OF NOTIFICATION: 11/03/09
LAST RESPONSE RECEIVED: 1/22/10
DATE ACTIVATED: 1/26/10

STATUTE OF LIMITATIONS: 1/29/14 -
11/04/14

COMPLAINANT: Joseph E. Tesch, Esq.

RESPONDENTS: Shurtleff Joint Fund and Lynn Gilbert,
in her official capacity as treasurer
Friends for Shurtleff and Lynn Gilbert,
in her official capacity as
treasurer
PAC for Utah's Future
Mark L. Shurtleff
Guidant Strategies

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 431(2)(A)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441i(e)
11 C.F.R. § 100.72(a)
11 C.F.R. § 100.131(a)
11 C.F.R. § 300.61
11 C.F.R. § 300.62

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INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: Internal Revenue Service

I. INTRODUCTION

The Complaint alleges that Friends for Shurtleff ("FFS" or "the Committee"), the
principal campaign committee for former U.S. Senate candidate and current Utah

1 Attorney General Mark L. Shurtleff ("Shurtleff"), violated the Federal Election
2 Campaign Act of 1971, as amended, ("the Act") by using impermissible funds to support
3 Shurtleff's federal candidacy. The Complaint also alleges that Shurtleff, through the
4 Shurtleff Joint Fund ("SJF"), a joint fundraising committee comprised of FFS and PAC
5 for Utah's Future ("the state PAC"), a state-registered committee related to Shurtleff,
6 used impermissible funds "to subsidize and support Shurtleff's federal candidacy."
7 Complaint at 2. Finally, the Complaint asserts that FFS failed to disclose disbursements
8 to Guidant Strategies, a Utah corporation that provided political consulting services to
9 both Shurtleff's unregistered U.S. Senate exploratory committee and later to FFS. *Id.*
10 Accordingly, the Complaint alleges Guidant Strategies made, and FFS accepted, a
11 prohibited in-kind contribution. *Id.*

12 In a joint response, SJF, FFS, the state PAC, and Guidant Strategies deny the
13 allegations. The Response states that Shurtleff considered running for the United States
14 Senate or for the Utah Governorship, and he retained Guidant Strategies to conduct
15 polling and surveys. The Response contends that all costs for such activity were
16 "properly allocated 50/50 – half as testing the waters activity related to a potential
17 gubernatorial race and half as testing the waters activity related to a potential Senate
18 race," and that Shurtleff and the unregistered U.S. Senate exploratory committee used
19 permissible funds for this activity. Response at 4. The Response also asserts that SJF
20 engaged in fundraising activity in accordance with the Act and the Commission's
21 regulations. The Response acknowledges that shortly after Shurtleff announced his
22 federal candidacy, the state PAC received contributions from impermissible sources and
23 made minor disbursements to local party committees, but it contends that the state PAC

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1 received these contributions in response to solicitations that preceded Shurtleff's federal
2 candidacy and the disbursements made were *de minimis*. See Response at 4 and 9.
3 Finally, the Response contends that Guidant Strategies provided services to Shurtleff's
4 exploratory committee and FFS in the ordinary course of business. See Response
5 at 9 – 10. As such, the Response seeks dismissal of the Complaint.

6 Based upon the Complaint, Response, and our review of publicly available
7 information, we recommend that the Commission find reason to believe that the PAC for
8 Utah's Future violated 2 U.S.C. §§ 441a(a)(1)(A) and 441i(e) by making excessive in-
9 kind contributions to Friends for Shurtleff and by using funds not subject to the Act's
10 amount and source limitations in connection with Shurtleff's U.S. Senate campaign. We
11 recommend that the Commission find reason to believe that Friends for Shurtleff and
12 Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a),
13 and 434(b) in connection with the apparent receipt of in-kind contributions from PAC for
14 Utah's Future and not disclosing its receipt of these contributions. We also recommend
15 that the Commission find reason to believe that Shurtleff Joint Fund and Lynn Gilbert, in
16 her official capacity as treasurer, violated 2 U.S.C. § 441i(e) by soliciting, receiving, and
17 transferring funds not subject to the Act's amount and source limitations. In addition, we
18 recommend that the Commission find reason to believe that Mark L. Shurtleff violated
19 2 U.S.C. § 441i(e) by soliciting funds not subject to the limitations, prohibitions, and
20 reporting requirements of the Act. Finally, we recommend that the Commission find no
21 reason to believe that Guidant Strategies violated the Act.

II. BACKGROUND INFORMATION

Shurtleff is the Utah Attorney General and was re-elected to a third four-year term in November of 2008. He maintains a Utah state-registered candidate committee, Shurtleff 2008. He began exploratory or "testing the waters" activity regarding a possible U.S. Senate campaign or Utah Governorship campaign in early 2009 and hired Guidant Strategies in February 2009 to conduct "testing the waters" polling and surveying. See Response at 4. Shurtleff formally announced his U.S. Senate candidacy on May 20, 2009, seeking the Republican nomination against incumbent U.S. Senator Bob Bennett. He filed the Statement of Organization for his principal campaign committee, FFS, and his Statement of Candidacy on May 29, 2009, and June 3, 2009, respectively. Other than the February 2009 polling, neither the Response nor publicly available information suggests that Shurtleff actively pursued the Utah Governorship. During the federal campaign, FFS and the state PAC established SJF, which sponsored a joint fundraising event. Shurtleff suspended his Senate campaign on November 4, 2009.

The state PAC registered with the State of Utah in January 2009. Public records list Shurtleff as the Governing Board Officer, and Jessica Fawson, the campaign chair for FFS, as the Chief Financial Officer/Treasurer. See PAC for Utah's Future Statement of Organization at <http://gva1.utah.gov/disclosures/SOOPDF.aspx?id=3141&x=.pdf>. The state PAC also filed with the Internal Revenue Service as a Section 527 organization in January 2009. The state PAC's IRS filing lists its purpose as "to provide funds and support for visionary Utah leaders who are seeking to better the lives of Utah citizens," and also identifies Shurtleff as the "Governing Board Executive" and Jessica Fawson as the "Finance Chair." See IRS Form 8871 (Notice of Section 527 Status) filed by the state

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PAC on January 10, 2009. IRS public records do not indicate that the state PAC has filed a Form 8872 disclosing receipts and disbursements.

III. FACTUAL AND LEGAL ANALYSIS

Federal officeholders and candidates, or their agents, or entities directly or indirectly established, financed, maintained, or controlled by a candidate for federal office, are prohibited from soliciting, receiving, directing, transferring or spending funds in connection with either Federal or non-federal elections, unless the funds comply with federal contribution limits and source restrictions. 2 U.S.C. § 441i(e)(1)(A) and (B);¹ 11 C.F.R. §§ 300.61 and 300.62. The Act limits individual contributions to a candidate's authorized committee to \$2,400 per election during the 2010 election cycle, and prohibits the knowing receipt of excessive contributions. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f).² The Act further prohibits the making and knowing receipt of corporate contributions. 2 U.S.C. § 441b(a). The State of Utah permits individuals, corporations, and labor unions to make contributions to candidates and political committees in unlimited amounts. *See* Utah Code Title 20A, Chapter 7.

An analysis of Shurtleff's relationship with FFS, SJF, and the state PAC affirms that Shurtleff directly or indirectly controls these three entities. FFS and SJF are political committees registered with the Commission and created for the benefit of Shurtleff's

¹ Section 441i(e)(2) excepts the application of section 441i(e)(1) where the funds are permissible under state law and the activity refers only to a candidate for State or local office and solely in connection with such State or local election. The funds raised and spent at issue in this matter appear to be for activity that refers to, at least in part, Shurtleff's federal candidacy.

² For the purpose of the Act's contribution limits, the state PAC would be subject to a maximum contribution of \$2,400 per election to a candidate's campaign. *See* 2 U.S.C. § 441a(a)(1)(A). The state PAC's contributions must comply with the Act's amount and source limitations. *See* 2 U.S.C. § 441i(e)(1)(A). Shurtleff withdrew from the Senate campaign before the primary election scheduled for June 22, 2010. Thus, the maximum amount that the state PAC could contribute to Shurtleff's candidacy would be \$2,400 in permissible funds.

1 federal candidacy. FFS is Shurtleff's principal campaign committee, and SJF is a joint
2 fundraising committee comprised of FFS and the state PAC. The available information
3 further indicates that Shurtleff directly or indirectly established and controls the state
4 PAC. The Response acknowledges that Shurtleff has been involved with the state PAC
5 since its inception, and that the state PAC's primary function is to raise funds to support
6 Shurtleff's state candidate committee, Shurtleff 2008. Response at 3 – 4. As the
7 Governing Board Executive of the state PAC, Shurtleff indirectly or directly controls the
8 state PAC. Finally, the state PAC, FFS, and SJF share overlapping officers.³ Thus, it
9 appears that Shurtleff directly or indirectly established, maintained, controlled, or
10 financed FFS, SJF, and the state PAC, *see* 11 C.F.R. §§ 300.61 and 300.62, and all of
11 these entities are therefore subject to the solicitation, receipt, and spending prohibitions of
12 section 441i(e).

13 **A. Use of nonfederal funds for FFS "testing the waters" activity and**
14 **post-candidacy-declaration activity⁴**
15

16 **1. Shurtleff's exploratory committee's "testing the waters"**
17 **activity**
18

19 The Complaint alleges that Shurtleff's exploratory committee commissioned
20 polling that was "entirely federal in nature," as they included issues such as "the recent
21 financial bailout packages, the American Recovery and Reinvestment Act of 2009, and
22 federal government appropriations known as earmarks" as well as "queried participants

³ Lynn Gilbert has been the treasurer for FFS and SJF since their inception. Public information provides that Jessica Fawson, the Finance Chair for the state PAC and an employee of Guidant Strategies, is the campaign chairperson for FFS as well as the campaign chairperson for Shurtleff's state-registered campaign committee, Shurtleff 2008. The PAC and Guidant Strategies share the same address, 147 Election Road, Draper, UT.

⁴ The Complaint does not allege that Shurtleff failed to timely file a Statement of Candidacy and disclosure reports, and the available information does not suggest that he made untimely filings.

1 about a head-to-head campaign between Mr. Shurtleff and Senator Bennett.” Complaint
2 at 2 – 3. The Response acknowledges that Shurtleff hired Guidant Strategies to conduct
3 polling and surveys in consideration of a run for the U.S. Senate or for Governor of Utah,
4 but maintains that costs were allocated equally between federal and state “testing the
5 waters” activity. Response at 4. The Response included a copy of Guidant Strategies’
6 billing and payment history with FFS, which indicates that Guidant Strategies billed the
7 federal exploratory committee on March 10, 2009, in the amount of \$10,500. See
8 Response Exhibit 2. The Response explains that this invoice amount covered part of the
9 debt owed to Guidant Strategies from the beginning of Shurtleff’s “testing the waters”
10 stage through June 30, 2009, and that FFS disclosed the debt owed to Guidant Strategies
11 for consulting services on its July 2009 Quarterly Report. Response at 4. FFS’s July
12 2009 Quarterly Report disclosed an outstanding debt to Guidant Strategies of \$23,131.56
13 for “Campaign Mnmt, Fundraising, Surveys.” Neither the Complaint nor the Response
14 provided a copy of the polling text.

15 At issue is whether the state PAC used impermissible funds to subsidize FFS by
16 paying for “significant polling” so that Shurtleff’s exploratory committee could “lay the
17 groundwork during its testing the waters” stage in anticipation of a federal campaign, as
18 alleged in the Complaint. Under 2 U.S.C. § 431(2)(A), an individual is deemed to be a
19 candidate for purposes of the Act if he or she receives contributions or makes
20 expenditures in excess of \$5,000. The Commission’s regulations establish a limited
21 exception to the threshold for attaining candidate status for “testing the waters” activities
22 at 11 C.F.R. §§ 100.72(a) and 100.131(a). “Testing the waters” activities include, but are
23 not limited to, conducting polls, making telephone calls, and traveling. *Id.* Funds

1 received and payments made to determine whether an individual should become a
2 candidate are excluded from the definitions of "contributions" and "expenditures." *Id.*
3 Only funds permissible under the Act may be used for such activities. *Id.*

4 The Response maintains that the costs for polling activity were allocated equally,
5 but the Response and the available information do not demonstrate this allocation
6 because neither the Respondents nor Complainant provided the complete polling and
7 surveying text. Further, the Response did not address the Complaint's detailed allegation
8 that the polling topics, noted earlier, were entirely federal in nature. Accordingly, there is
9 a substantial question as to whether more than 50% of the polling costs should have been
10 attributed to Shurtleff's federal exploratory committee.

11 The Complaint also alleges that the state PAC used impermissible funds to
12 finance Shurtleff's exploratory committee and his Senate candidacy. See Complaint at 2
13 and 8. The Response states that the state PAC functions almost exclusively to raise funds
14 that end up being transferred to Shurtleff's state-registered candidate committee,
15 Shurtleff 2008, to pay for Attorney General Shurtleff's officeholder expenses. Response
16 at 4.⁵ Prior to Shurtleff's announcement of his U.S. Senate candidacy, the state PAC
17 disclosed that it received donations of \$280,498, of which \$224,000 was from
18 corporations, and made \$205,515 in disbursements. The state PAC disclosed payments
19 to Guidant Strategies close in time to when it retained Guidant Strategies to conduct

⁵ From January 24, 2009, through the close of Shurtleff's U.S. Senate campaign on November 4, 2009, the state PAC disclosed disbursements to Shurtleff 2008 totaling \$161,000. *Id.* The state PAC disclosed that it made a donation to Shurtleff 2008 on January 24, 2009, in the amount of \$90,000, and on January 27, 2009, Shurtleff 2008 disclosed a disbursement to Guidant Strategies in the amount of \$60,000 for "Reimbursement Campaign Expenses/Personnel." See PAC for Utah's Future August 2009 Disclosure Report and Shurtleff 2008 August 2009 Disclosure Report at <http://gva1.utah.gov/disclosures/FinancialPDF.aspx?pid=936&id=2259&x=.pdf>.

1 polling, *see* Response at 4, and at a time when neither the Response nor the available
2 information suggests that Shurtleff was actively pursuing any other office but the U.S.
3 Senate. Specifically, disbursements to Guidant Strategies disclosed by the state PAC
4 totaling \$24,399 for "Fundraising Event Management" during March, April, and May
5 2009 may have supported polling and other activity related to Shurtleff's federal
6 exploratory campaign. This information suggests that the state PAC may have used
7 federally impermissible funds to subsidize FFS by making disbursements to Guidant
8 Strategies for services related to Shurtleff's unregistered Senate exploratory committee.
9 As such, FFS may have knowingly accepted excessive and prohibited in-kind
10 contributions.

11 **2. Shurtleff's post-declaration of candidacy activity**

12 Shurtleff formally announced his U.S. Senate candidacy on May 20, 2009. The
13 Committee's July 2009 Quarterly Report disclosed the receipt of approximately \$105,400
14 in contributions through June 30, 2009, and only two disbursements, totaling \$692.79, for
15 office supplies and booth rental. The Report also showed an outstanding debt to Guidant
16 Strategies of \$23,131.56 for "Campaign Mnmt, Fundraising, Surveys." The Committee's
17 October 2009 Quarterly Report, filed after the Complaint, disclosed payments of
18 \$23,131.56 on July 7, 2009, and \$17,137.39 on July 14, 2009, to Guidant Strategies for
19 "Campaign Mnmt, Fundraising, Surveys" and "Mgmt, Fundraising, Webhosting, Tele,"
20 respectively.⁶ The Report also disclosed additional debts to Guidant Strategies of
21 \$25,412.75 for similar services as well as a disbursement of \$6,625 for "Merchandise,"

⁶ The Committee's October 2009 Quarterly Report disclosed the receipt of contributions of \$104,608.75 and disbursements of \$62,344.70.

1 and additional debts to another vendor of \$5,062.50 for rent. Shurtleff suspended his
2 Senate campaign on November 4, 2009.⁷

3 The Complaint alleges that because FFS's July 2009 Quarterly Report did not
4 disclose disbursements for campaign start-up and campaign operating costs, FFS violated
5 the Act by using nonfederal funds for these activities. As noted above, the Committee's
6 July 2009 Quarterly report disclosed only two expenditures totaling \$692.79, but the
7 Complaint alleges that when Shurtleff declared his federal candidacy, FFS had a fully
8 operational website, office space, volunteers, and campaign materials for distribution at
9 public events. Complaint at 8. The Complaint suggests that the state PAC underwrote
10 these activities, because when Shurtleff declared his federal candidacy, the state PAC had
11 already raised more than \$260,000 from sources not federally permissible or not within
12 federal limits. *Id.* The state PAC's 2009 state disclosure reports disclose that after
13 Shurtleff's declaration of candidacy for federal office, it received corporate contributions
14 in the amount of \$19,000. PAC for Utah's Future August 2009 Disclosure Report at
15 <http://gval.utah.gov/disclosures/FinancialPDF.aspx?pid=944&id=3141&x=.pdf>. The
16 Response acknowledges the state PAC's receipt of corporate contributions, but
17 "concludes that Respondents did not violate 441i(e) in connection with the solicitation,
18 receipt and spending of these funds" because these funds were solicited before Shurtleff
19 became a federal candidate, and the funds were mostly used to pay Attorney General
20 constituent services, and for a charitable contribution that had no connection with an
21 election, and therefore not received in connection with a federal or nonfederal election.
22 Response at 8 – 9. Regarding the state PAC's contributions to local parties, the Response

⁷ The Committee's 2009 Year-End Report disclosed the receipt of contributions of \$10,271.75 and disbursements of \$101,201.53 including contribution refunds of \$29,720.00.

1 suggests these disbursements, totaling approximately \$3,500, are *de minimis* and the
2 Committee can make an accounting to demonstrate that federal funds were available to
3 cover this amount. *Id.* The Response does not address any disbursements for the
4 creation and maintenance of FFS's website, office space, or campaign materials.

5 The state PAC appears to have made expenditures to Guidant Strategies with
6 nonfederal funds for the benefit of Shurtleff's federal candidacy. The state PAC
7 disclosed expenditures to Guidant Strategies on several dates from June through
8 November 4, 2009, totaling \$13,137.77 for fundraising event management and
9 consulting. The Response does not address these expenditures. As with Shurtleff's
10 "testing the waters" activity discussed above, the information suggests that the state PAC
11 may have subsidized FFS by making these payments at a time when Shurtleff's U.S.
12 Senate campaign was apparently his only active campaign. Also, as explained earlier,
13 information indicates that the state PAC is established, financed, maintained or controlled
14 by Shurtleff, and thus it is subject to the Act's prohibition on soliciting, receiving,
15 directing, transferring, or spending funds in connection with a federal election. *See*
16 2 U.S.C. § 441i(e). Accordingly, because the state PAC appears to have made an
17 excessive in-kind contribution to FFS, and spent funds not subject to the Act's amount
18 and source limitations in connection with Shurtleff's federal campaign, we recommend
19 that the Commission find reason to believe that PAC for Utah's Future violated 2 U.S.C.
20 §§ 441a(a)(1)(A) and 441i(e). In view of FFS's apparent knowing receipt of in-kind
21 contributions from the state PAC, made with federally excessive and impermissible
22 funds, we recommend that the Commission find reason to believe that Friends for
23 Shurtleff and Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C.

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1 §§ 441b(a) and 441a(f). Further, because FFS did not disclose the receipt of such in-kind
2 contributions, we recommend that the Commission find reason to believe that Friends of
3 Shurtleff and Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C.
4 § 434(b).

5 **B. Joint fundraising activity**

6
7 The Complaint alleges that the "Shurtleff Shotgun Blast" fundraiser sponsored by
8 SJF violated the Act because the solicitation illegally solicited "soft money." SJF held
9 the fundraiser on September 16, 2009. The SJF fundraiser invitation header reads
10 "UTAH ATTORNEY GENERAL MARK SHURTLEFF *Cordially invites you to the 6th*
11 ANNUAL WASATCH SHOTGUN BLAST," and explains that SJF is a joint fundraising
12 committee benefitting FFS and "a non-election account" of the state PAC. Attachment 1.
13 The invitation states the federal limits and permissible sources for contributions to FFS.
14 *Id.* at 1. The invitation's reply card asks for individual contributions in the amounts of
15 \$2,500 and \$5,000, which exceed the Act's individual contribution limit of \$2,400 for the
16 2010 election cycle. *Id.* at 2; *see* 2 U.S.C. § 441a(a)(1)(A). SJF's invitation also appears
17 to solicit contributions from corporations and other federally-impermissible sources,
18 stating that "[c]orporations, labor organizations, foreign nationals, and federal
19 government contractors may not make contributions to the senatorial committee."
20 Attachment 1 at 2.

21 The Response asserts that 11 C.F.R. § 102.17(a)(1)(i) allows a political
22 committee, in this instance FFS, to "engage in joint fundraising with other political
23 committees or with unregistered committees or organizations." Response at 6.
24 According to Respondents, to comply with the Commission's regulations and pursuant to

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1 SJF's joint fundraising agreement, SJF established two accounts, one for federally
2 permissible contributions for the benefit of FFS, and the second to accept the remaining
3 amounts. Response at 6 – 7; *see also* Response Exhibit 4. According to the agreement,
4 all funds attributed to the state PAC would only be used for "non-election purposes," and
5 would not be expended by anyone who is a federal candidate or by an agent of or
6 committee established, financed, maintained, or controlled by anyone who is a federal
7 candidate. Response Exhibit 4. The Response acknowledges that the fundraiser
8 invitation is a solicitation, but suggests that the fundraising notice does not solicit
9 impermissible funds for an election purpose. Response at 8.

10 SJF's fundraiser solicitation requests that all checks be made payable to SJF.
11 According to the Response and SJF's fundraising agreement, SJF would then transfer
12 federally impermissible amounts to the state PAC to be segregated into a non-election
13 account. *See* 11 C.F.R. § 102.17(c)(2)(ii)(B) and (c)(3). As a result of the "Shurtleff
14 Shotgun Blast" fundraiser, SJF received at least ten checks totaling \$84,475 attributed to
15 the state PAC, and deposited into the state PAC's "non-election account." Although the
16 Response asserts that Shurtleff and committees associated with him were aware of
17 section 441i(e) and that the federally impermissible amounts were not raised in
18 connection with a federal or nonfederal election, the solicitation, receipt, and transfer of
19 these federally impermissible funds by SJF, a federal committee that is established,
20 financed, maintained, or controlled by Shurtleff, belies the lack of a connection with
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1 elections.⁸ Because the information indicates that SJF solicited, received, and transferred
2 funds not subject to the Act's amount and source limitations, we recommend that the
3 Commission find reason to believe that Shurtleff Joint Fund and Lynn Gilbert, in her
4 official capacity as treasurer, violated 2 U.S.C. § 441i(e). The SJF fundraiser invitation
5 heading "UTAH ATTORNEY GENERAL MARK SHURTLEFF *Cordially invites you to*
6 *the 6th ANNUAL WASATCH SHOTGUN BLAST,*" and the disclaimer, which solicits
7 contributions to the state PAC and to FFS but makes clear that only the latter were
8 subject to any limits or source prohibition, together indicate that Shurtleff, a federal
9 candidate at the time, was soliciting funds that were not subject to the Act's amount and
10 source limitations. See Attachment 1 at 1; see also Response at 5. Accordingly, we
11 recommend that the Commission find reason to believe that Mark L. Shurtleff violated
12 2 U.S.C. § 441i(e).

13 C. Guidant Strategies

14
15 The Complaint alleges that Guidant Strategies provided a prohibited in-kind
16 contribution to Shurtleff's unregistered exploratory committee, or to FFS, by defraying
17 costs for polling and political consulting services. Complaint at 4. The Response asserts
18 that Guidant Strategies extended credit to FFS in the ordinary course of its business.
19 Response at 9 – 10. FFS disclosed an outstanding debt to Guidant Strategies on its July

⁸ The Response relies upon AO 2009-26 (Coulson) but that opinion is factually distinguishable. In AO 2009-26, Coulson was a state officeholder and federal candidate for the 10th Congressional District of Illinois. Coulson, in her capacity as a state officeholder, sought to use her state campaign committee to sponsor and distribute literature to her State legislative district in conjunction with a "seniors fair" that she had previously sponsored. The Commission determined that because Coulson was a Federal candidate and her state campaign committee is an entity that is directly established, financed, maintained, or controlled by her, 2 U.S.C. § 441i(e) would apply for any activity undertaken in connection with a Federal or non-federal election. Because the Commission concluded that the "seniors fair" was not related to a Federal or non-federal election, the funds spent for the activity did not fall within the scope of section 441i(e). In the instant matter, the "Shurtleff Shotgun Blast" was a fundraiser held, in part, for the undisputed benefit of Shurtleff's federal candidacy. Therefore, the funds raised, or spent, in connection with this event fall within the scope of section 441i(e).

1 2009 Quarterly Report of \$23,131.56 and disclosed disbursements to Guidant Strategies
2 on its October 2009 Quarterly Report for campaign services that totaled approximately
3 \$41,000. The Committee's October 2009 Quarterly Report also disclosed additional
4 outstanding debts totaling \$25,000. Finally, the Committee's 2009 Year-End Report
5 disclosed additional disbursements to Guidant Strategies for campaign services that
6 totaled approximately \$55,000 and an outstanding debt of \$12,634.26. Although FFS
7 disclosed substantial debts to Guidant Strategies, it has also disclosed \$96,000 in
8 payments. The available information does not indicate that Guidant Strategies made a
9 contribution to FFS in the form of reduced prices or a payment schedule outside
10 Guidant's ordinary course of business, or that Guidant Strategies attempted to collect
11 money owed to it in a commercially unreasonable matter. Therefore, we recommend that
12 the Commission find no reason to believe that Guidant Strategies violated the Act.

13 **IV. PROPOSED INVESTIGATION**
14

15 This matter will necessitate an investigation to determine whether FFS accepted
16 prohibited and undisclosed in-kind contributions during Shurtleff's unregistered
17 exploratory committee's "testing the waters" stage as well as after his declaration of
18 federal candidacy. The investigation would confirm the allocation of costs for the
19 February 2009 polling conducted by Guidant Strategies via an assessment of the polling
20 questions.

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As the investigation proceeds, it may become necessary to issue the appropriate interrogatories, document subpoenas, and deposition subpoenas. Therefore, we recommend that the Commission authorize the use of compulsory process.

V. RECOMMENDATIONS

1. Find reason to believe that PAC for Utah's Future violated 2 U.S.C §§ 441a(a)(1)(A) and 441i(e).
2. Find reason to believe that Friends for Shurtleff and Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a), and 434(b).
3. Find reason to believe that Shurtleff Joint Fund and Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C. § 441i(e).
4. Find reason to believe that Mark L. Shurtleff violated 2 U.S.C. § 441i(e).
5. Find no reason to believe that Guidant Strategies violated the Act.
6. Approve the attached Factual and Legal Analysis.
7. Authorize the use of compulsory process as to all Respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
8. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

Date

BY:

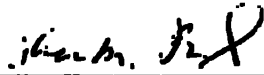

Stephen A. Gura
Deputy Associate General Counsel
for Enforcement

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Mark Allen
Assistant General Counsel



Shana M. Broussard
Attorney

- Attachments:
1. Shurtleff Shotgun Blast Invitation

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UTAH ATTORNEY GENERAL MARK SHURDEFF

Cordially invites you to the

6TH ANNUAL WASATCH SHOTGUN BLAST

Trap and .22 Shooting Competition

For an exciting evening of shooting, dinner, prizes and country music

Date and Time: WEDNESDAY, SEPTEMBER 16, 2009
4:00 PM - 9:00 PM

Location: Browning Worldwide Headquarters
6175 Cottonwood Canyon Road
Mountain Green, Utah 84050

Entry Fee: \$5,000 per three person team
\$2,000 per person

Please RSVP by mail or call 888.808.2010

Paid for by Shurdeff Joint Fund

Contributions are not tax deductible as charitable donations. Shurdeff Joint Fund is a joint fundraising committee benefiting Friends for Shurdeff Inc. (principal campaign committee of Attorney General Shurdeff's senatorial campaign) and a non-election account of PAC for Utah's Future (a Utah registered committee). Contributions permissible for the senatorial committee will be attributed to the senatorial committee. (Individuals, sole proprietorships, partnerships, and LLCs created as partnerships may contribute \$2,400 per election, and federal multi-candidate PACs may contribute \$5,000 per election.) Other contribution amounts will be attributed to a separate account of PAC for Utah's Future and used for non-election purposes, such as occasional charitable donations, or other purposes permitted by law. Notwithstanding the allocation described, a contributor may designate a contribution for a particular participant, subject to legal allowances. ~~Corporations, labor organizations, foreign nationals, and federal government contractors may not make contributions to the senatorial committee.~~ If a contributor makes a contribution that would exceed the amount permissible for the senatorial committee, the allocation of the contribution will be adjusted. All contributors will receive notice of how their funds were allocated. Please note that federal law prohibits any contributor from being reimbursed by another person for a contribution.

6TH ANNUAL WASHATCH SHOOTGUN BLAST

☐ Yes, I will be attending the 6th Annual Washatch Shotgun Blast.

Total number of guests in my party _____ Attached is my check for \$ _____

☐ No, I am unable to attend, but I'd like to support Mark Shurtleff's leadership.

ENCLOSED IS MY CONTRIBUTION OF:

☐ \$500 ☐ \$1,000 ☒ \$2,500 ☐ \$5,000 ☐ Other \$ _____

Please make your check payable to Mark Shurtleff

To comply with federal law, we must use our best efforts to obtain, maintain, and submit the names, mailing address, occupation, and name of employer of individuals whose contributions exceed \$200 per election cycle. Please provide this information and helpful contact information:

Name _____

Address _____

Occupation _____

Name of employer _____

Phone _____

E-mail _____

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